IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

R.S.E.B. & anr.	vs.	Rajasthan Oil Industries Limited.

S.B. Civil Second Appeal No.113/1987 against the judgment and decree dated 7.1.1987 passed by the learned Addl. District Judge No.2, Hanumangarh in Civil Appeal No.27/1985

Date of Judgment: March 10, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr.Manish Shishodia for the appellants.

BY THE COURT:

Heard learned counsel for the appellants.

The appellants are aggrieved against the judgment and decree passed by the trial court dated 21.9.1984 by which the learned trial court held that the bill for Rs.69595.60 issued by the appellant-defendant-Electricity Board against the plaintiff has wrongly been issued, however, the trial court held that since it is a case of bona fide dispute even in view of the facts mentioned by the defendant-appellant in the written statement, therefore, till the proper determination in accordance with law is not made, the defendant-appellant cannot disconnect the electricity supply from the plaintiff's unit. The judgment

and decree of the trial court was upheld by the first appellant court. Hence this second appeal.

Following substantial question of law was framed by this Court on 16.2.1990 while admitting this appeal:-

> *"Whether there existed a bonafide dispute between the parties regarding the validity of the bills and the plaintiff should have referred it to the electrical Inspector?"*

According to the learned counsel for the appellants, the courts below committed serious error of law in holding that it is a case of bonafide dispute. In fact the appellants rightly issued the bill to the respondent-plaintiff. It is also submitted that the plaintiff did not pay full amount of the bill. It is submitted that in the month of December, 1983, there was a bill of Rs.74591.19, against which the plaintiff paid only Rs.13100.59 and similarly for the bill of January, 1983, the plaintiff paid Rs.14131.55 against the bill of Rs.79516.36. It is also alleged that the plaintiff used to commit default which is apparent from the facts as he has committed default in paying the bills also. The amounts are given in para no.6 of the grounds mentioned in the appeal. According to the learned counsel for the appellant in view of the above, the plaintiff was not entitled for grant of decree for injunction against the appellant-Electricity Board.

I considered the submissions of the learned counsel for the

appellants and perused the record. It will be worthwhile to mention here that the trial court narrated all the facts in the judgment and found that even the appellant-defendants themselves admitted for the adjustment of huge amount of the plaintiff against other demands out of the amounts which they recovered from the plaintiff by issuing bills of earlier time. Even from the written statement, it is clear that when according to the defendants themselves, the bill for the amount of about Rs.27,000/- to Rs.28,000/- was issued, still the demand was raised against the plaintiff in the month of January, 1983 of Rs.69595/- No justification was submitted for this demand. On 8.2.1983, the accounts were examined in the office of the defendant-appellant and the plaintiff's case for adjustment of Rs.27,996 etc. was recognized to the higher authorities. It is also admitted that out of this amount, Rs.14,325.45 was paid to the appellant-Electricity Board. It is admitted settlement of the account in their written statement and also admitted payment of the said amount by the plaintiff to the defendant-appellant. In view of the above, after considering other entries about the payment and default, the court below held that the demand of Rs.69595.60 could not have been issued by the appellant-Electricity Board against the plaintiff. These findings are not vitiated because of any error of fact.

So far as the contention of the learned counsel for the appellants that the plaintiff-respondent used to commit default is concerned, for

that an illegal demand cannot be justified. If the appellant-Electricity Board failed to recover the amount in time for the bills of particular months, then that is their fault but on this count, they cannot raise any arbitrary demands against the consumer.

Otherwise also, this is not a case fit for interference by this Court by any stretch of imagination because of simple reason that the two courts below merely granted injunction against the disconnection of the electricity supply of the plaintiff and protected the appellant-defendants' right by holding that the appellant-Electricity Board can lawfully get the dues determined and thereafter can recover the amount. The appellant should have immediately initiated proceedings for said determination instead of filing the appeal.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.